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NEW MEASURES FOR THE ACCELERATION OF CRIMINAL PROCEEDINGS IN CZECH CRIMINAL LAW

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An Introduction

In the last decade there are two phenomena which are characteristically involved in the development of Czech criminal law. In the field of substantive criminal law, it is an effort to reduce the number of imprisonments imposed, which is manifested in the introduction of new kinds of alternative punishments or the extent of the possibilities for conditional release. In the field of procedural criminal law it is possible to see clearly an endeavour to accelerate and simplify criminal proceedings.

In the last few decades the problem regarding the very long duration of criminal proceedings is negatively felt not only in the Czech Republic but at least all over Europe. This phenomenon, among other things, obviously results from the considerable extension of criminal law under which a whole range of illegal acts which are settled through criminal sentencing. These acts previously fell within the area of different legal fields. In addition to this, new social phenomena (in the economic field as well as phenomena occurring as a result of the intensive development of communication technologies, etc.) have also necessitated protection by means of criminal law norms. The significance of this issue is closely connected with the fact that unreasonable delays in crimi-

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nal proceedings represent a violation of the right to hearing of the case within a reasonable period of time resulting from the European Convention upon the protection of human rights and fundamental freedoms (compare article 6 clause 1 of the Convention).

As a solution of this problem states began to introduce some new instruments into their legal regulations whose purpose is to solve easier and less serious cases in non-typical and quicker way, than in standard criminal proceedings. These instruments may be divided into two main groups: First one is based on discontinuance of criminal proceedings if some special conditions are fulfilled, so criminal proceedings do not continue to its standard result, i.e. to the pronouncing of guilt and condemnatory sentence; measures included in this group are usually signed as *diversions in criminal proceedings*[1].

Second group of measures accelerating criminal procedure consists of special forms of pronouncing of guilt, when such decision has effect of condemnatory sentence although the court makes it without trial. *Criminal order* and also forms of *plea bargaining* may be considered as a typical representatives of this category of measures.

Development of these measures has not been finished and new forms of instruments directed to the acceleration of criminal proceedings are introduced into criminal law. Also in the field of Czech criminal law may be observed activities of this type and their results may represent an interesting material for comparison.

New forms of diversion in criminal proceedings

First forms of diversion in criminal proceedings were implemented into Czech criminal law during the 90's of the 20th century when several amendments into the Czech Criminal Procedure Code (Act N. 141/1961 Coll.) were made. Through the Amendment No. 292/1993 Coll. (which came into a force

[1] To the characteristics of diversion in criminal proceedings see e.g. **D.J. Newman**, **P.R. Anderson**, *Introduction to Criminal Justice*, IV ed., Random House, New York 1989, p. 631; **W. Ludwig**, *Diversion: Strafe im neuen Gewand*, De Gruyter, Berlin 1989, p. 9; **F. Adler**, **G.O.W. Mueller**, **W.S. Laufer**, *Criminology*, McGraw-Hill, New York 1991, pp. 356–357; **O. Suchý**, *Odklon v trestním řízení*, Právník 1991/3, pp. 248–255 or **F. Ščerba**, *Alternativní opatření v nové právní úpravě*, Leges, Praha 2011, p. 43 and next.

from January 1, 1994) the first type of diversion was enshrined in the Czech Criminal Procedural Code – *conditional discontinuance of criminal proceedings* (see § 307 and 308 of Criminal Procedural Code). Two years later the first type was followed by the second one (as a result of the adoption of the Criminal Procedure Code Amendment No. 152/1995 Coll.), which is called *settlement* (see § 309 and next Criminal Procedural Code). Within the following ten years another two types of diversion were introduced, namely it was *conditional postponing of punishment proposal* (see § 179g and 179h of Criminal Procedural Code), what is the variant of conditional discontinuance of criminal proceedings designed for using in shortened preliminary proceedings, and finally *withdrawal of criminal prosecution* in proceedings against juvenile offenders (see § 70 and 71 of Juvenile Justice Act – Act No. 218/2003, Coll.).

The introduction of diversions into the Czech criminal law and their use in practice is motivated not only by an effort towards the acceleration of criminal proceedings, because diversions are connected with other important advantages. An accused person does not need to pass all criminal proceedings and he is not formally sentenced. Through diversion a victim may reach a much easier satisfaction of his or her claim for reparation of damage caused by the criminal act. The victim may also reach some moral satisfaction, because some types of diversions are conditioned not only by consent of the accused but also by consent of the victim and it means that offender must apologise to the victim. These are the reasons, why diversions should be perceived not only as means of the acceleration of criminal proceeding, but also as instruments of restorative justice[2].

Conditional discontinuance of criminal proceedings (and its variant for shortened preliminary proceedings – conditional postponing of the punishment proposal) is kind of diversion, which is most often used in practice of Czech state attorneys and courts[3]. It may be applied at category of less serious criminal offences, which are called misdemeanours (originally "přečiny"); this category

[2] See e.g. **J. Shapland**, *Victims, the Criminal Justice System and Compensation*, [In:] **P. Rock** (ed.), *Victimology*, Darthmouth, Aldershot 1994, pp. 265–283; **O. Novotný**, **J. Zapletal** a kol., *Kriminologie*, 3rd ed., ASPI – Wolters Kluwer, Praha 2008, pp. 237–239.

[3] Approximately 7,5 percent of all cases prosecuted in standard preliminary (pre-trial) proceedings were solved through the conditional discontinuance of criminal proceedings during last five years – closer see Statistické ročenky kriminality (Statistical Yearbook of Criminality), available on: www.justice.cz and http://cslav.justice.cz/InfoData/uvod.html; at the date 22nd of July, 2013.

includes all negligent criminal offences, and intentional offences which may be (according to the Criminal Code – Act No. 40/2009 Coll.) punished by imprisonment up to five years (see § 14 section 2 of Criminal Code). Beside the consent of the accused person with conditional discontinuance of criminal proceedings and his confession to committing a crime (which are common requirements for diversion, as it was mentioned above), the next condition for the use of conditional discontinuance of criminal proceedings lays in compensation of damage. The accused person has to compensate the damage caused by his criminal offence to an injured person, but under the Czech Criminal Procedural Code it is acceptable, when the accused just makes a contract with the injured person for compensation; in that case, the accused is obliged to fulfil this contract during a prescribed probation period.

If the criminal proceedings is conditionally discontinued, the state attorney or court determines a probation period from six month up to two years. During this period the accused is obliged to behave properly, he has to respect imposed duties or restrictions, has to fulfil a contract of compensation for damages. If the accused fulfils these duties, his criminal proceedings are definitely finished; if not, the criminal proceedings continues.

Although it has been said, that conditional discontinuance of criminal proceedings is often used in practice of Czech state attorneys and courts, there exists one specific group of cases, where the diversion would be more often used in the right way to obtain a solution; this is a category of crimes committed in traffic (negligent bodily injury, driving under the influence of alcohol etc.). It should be emphasised that this category of offences represents a large share of all criminal cases solved by the system of criminal justice, so the fast performance of criminal proceedings in dealing with these offences is the goal, which is very important to reach.

In such cases the state attorney and court often feel a necessity to forbid the offender from driving a car for some period, because it is a basic and effective penalty for sanctioning of this specific category of crimes. But the prohibition of an activity (prohibition of driving a car) has always been just a form of punishment, i.e. measure imposed strictly by the court as a part of the condemnation. Thus the use of diversion was not possible and it was necessary to solve the criminal proceeding in its full and often long form.

That was the reason why the Amendment to the Criminal Procedural Code made by Act No. 193/2012 Coll. introduced a special variation of conditional

discontinuance of criminal proceedings. This variation is based on the fact, that the accused person voluntarily accepts a special restriction – not to perform an activity, whose performance was the cause of a criminal act (see § 307 section 2 of Criminal Procedural Code). This restriction may be typically based on obligation not to drive a car within the probation period, so this kind of conditional discontinuance of criminal proceedings may be used correctly in prosecutions regarding road traffic crimes.

This form of diversion may also be considered as a proof of an interesting trend, which is typical not only for the Czech criminal law, but commonly for modern criminal law of continental type. Sanctioning of criminal offences lays no longer in the exclusive jurisdiction of courts, but it is partially shifted to the jurisdiction of prosecution (state attorneys). In some way it may be considered as a breach of the basic dogma that only an independent court may decide if a crime has been committed and the punishment for the crime. But it is necessary to notice and emphasize the basic common condition of diversions based on consent of the accused person with the use of diversion, i.e. voluntary acceptance of the sanctioning through some form of diversion.

A diversion in criminal proceedings is connected with some form of sanctioning of the accused person, in spite of that there is not formally pronounced guilt – that is why diversions may be included into the category of *sanction measures*[4]. Without the consent of the accused person with the diversion, it would be being used in strict conflict with principle of the presumption of innocence.

Plea bargaining in Czech criminal law

The year 2012 may be considered as a breakthrough in the system of the Czech criminal law, because the Czech legislator – following some other states' example (e.g. Germany or the Slovak Republic) – passed the amendment to the Criminal Procedural Code made by Act No. 193/2012 Coll., that introduced an institute, the aim of which is also to accelerate criminal proceedings which, however, at the same time does not only apply in cases of less serious crimes (unlike diversions in criminal proceedings). This institute is called the

[4] See **F. Ščerba**, *Odklon jako sankční opatření*, Trestněprávní revue 2009/2, pp. 33–36.

agreement upon the guilt and punishment (see § 175a and 175b of Criminal Procedural Code), which was originally mentioned in connection with the system of criminal law in the countries belonging to the Anglo-Saxon legal order where it is frequently called *plea bargaining*[5]. This step was not unexpected at all as there had already been two unsuccessful proposals of a similar nature which were submitted for the approval of the Chamber of Deputies of the Czech Republic. The introduction of this institute is also touched upon in the intended subject matter of the re-codification of the Czech criminal procedural law.

Making an agreement between the accused (who is represented by an advocate) and the prosecution (represented in the Czech Republic by the state attorney) can be regarded as the fundamental principle behind the institute of the agreement upon the guilt and punishment. This agreement includes the defendant's confession to the crime committed and an accurate definition of the legal consequences drawn as a result of the commission of this crime. These consequences especially in the form of a concrete punishment are drawn by the state as a reaction to the crime committed. If this agreement is supposed to have the power and effect of a conviction it must subsequently be approved by the court.

The advantages resulting from the employment of this institute can be easily seen in the considerable acceleration of criminal proceedings contributing to the fulfillment of the international requirements mentioned above. It also contributes to the simplification of the process of giving evidence, easies the performance of the bodies responsible for criminal proceedings and last but not least the solution of cases through the agreement upon the guilt and punishment of the accused can also be beneficial from the viewpoint of the efficiency of criminal law bearing in mind that the reaction of the criminal law to the crime committed is all the more effective if it follows immediately after the crime was committed.

On the other hand the institute of plea bargaining under the system of continental criminal law represents a foreign element as it collides with certain fundamental principles upon which the criminal proceedings (falling within the continental legal system) are based. It specifically collides with the principle of legality and the principle of material truth. After all this point is frequently

[5] In the following text the expression *agreement upon the guilt and punishment* will be used in connection with the Czech legal regulation as a literal translation of the term used in the Czech legal norms.

raised by many of those who strongly oppose the idea of the introduction of the institute of the agreement upon the guilt and punishment[6].

The extraneousness of the institute of *plea bargaining* from the viewpoint of continental system of criminal law results from a different concept of the role of the judge in criminal proceeding. The system of Anglo-Saxon criminal law is based on adversarial model of criminal proceeding in which the prosecutor has a very strong position and a large discretionary power, whereas the judge plays the role of a passive arbitrator with limited powers. By way of contrast the continental system of criminal law is based on inquisitorial court procedure where the roles of the parties mentioned above are to a certain extent reversed, i.e. the court plays a much more active role in the criminal proceedings and in the last instance it is responsible for the proper clarifying of the facts of a case[7].

These are the reasons why the Czech legislator tried to enshrine this institute in the Czech legal system so that this traditional system of Czech jurisdiction would not be upset if possible, i.e. there was evidently an effort to minimize the intervention into the principles of court procedure applied in the criminal proceedings of the continental legal systems. Thus we can see the rise of another type of institute of *plea bargaining* which in certain features differs from its original model applied in the Anglo-Saxon jurisdictions.

1. Negotiation of the agreement upon guilt and punishment

The first phase of the solution of criminal proceedings through the agreement upon the guilt and punishment falls into the preliminary (prejudicial) proceedings, when the accused and state attorney may negotiate this agreement. An initiative to such negotiation may arise from the accused or from the state attorney. However, the accused has no legal claim to negotiation an agreement,

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[6] Within the Czech professional literature comp. especially **J. Musil**, *Dohody o vině a trestu jako forma konsenzuálního trestního řízení*, Kriminalistika 2008/1, pp. 3–26; **idem**, *Dohody o vině a trestu – ani či ne?*, [In:] *Rekodifikácia trestného práva – doterajšie poznatky a skúsenosti.* Zborník príspevkov z celoštátneho seminára s medzinárodnou účasťou konaného dňa 21. apríla 2008, The school of law in Bratislava, Bratislava 2008, pp. 179–201; **O. Novotný**, *Je naše trestní právo procesní v krizi?*, Trestní právo 2006/7–8, pp. 28–31; **M. Protivinský**, **V. Kratochvíl**, *Jsou dohody v trestním řízení přípustné a nutné?*, Kriminalistika 2004/3, pp. 239–242.

[7] Compare e.g. **J.I. Turner**, *Plea bargaining across borders*, Wolters Kluwer, Aspen 2009, pp. 76–77.

so if the state attorney does not consider the case as suitable for this way of solution, he may refuse the accused's initiative to negotiate.

The basis of the legal condition for negotiation of the agreement upon the guilt and punishment lays in the confession of the accused about committing the prosecuted act. However, the commencement of the agreement upon the guilt and punishment is, under the Czech Criminal Procedure Code, conditioned also by the fact that the investigation results sufficiently prove that the act has been committed, the act is a crime and that the accused did commit the crime (compare § 175a clause 1 of the Criminal Procedure Code). Consequently, this requirement is accented in the provision § 175a clause 3 – under this provision the state attorney is allowed to make an agreement with the accused upon the guilt and punishment only in cases when the preliminary proceedings results do not challenge the verity of the accused's statement about the commission of the crime prosecuted.

It is obvious, that the Czech legal regulation efforts to prevent condemnation (through the agreement upon the guilt and punishment) based on a false confession of the accused. The state attorney as well as the court (see lower) they are under the obligation to find out the facts of the case so that the content of the agreement upon the guilt and punishment made between the prosecutor and the defendant is in harmony with the objective facts, thus they have to thoroughly review the defendant's confession. Thus the Czech legal regulation does not represent a real breakthrough in the principle of material truth (see § 2 clause 5 of the Criminal Procedure Code) but rather its modification.

However, at this stage it must be emphasized that the conditions and interpretation of the legal regulation of the institute of *plea bargaining* outlined above from the viewpoint of the principle of material truth does not necessarily mean that the state attorneys (and courts as well) will respect and apply this institute in practice. After all opinions frequently appear in professional literature according to which the idea of a thorough review of the confession made by the accused is nothing more than just a "pious hope of the legislator"[8].

The fact that the principle of material truth must be respected even in the proceeding involving the agreement upon the guilt and punishment resulting into one important aspect of interpretation of the Czech the legal regulation, which represent a significant difference of this regulation in comparison with Anglo-Saxon concept of the institute of the *plea bargaining*. If the material

[8] **J. Musil**, *Dohody o vině a trestu jako forma...*, p. 15.

truth is still supposed to have priority over the formal (agreed) truth it is not possible to legally qualify the act committed as a part of the negotiation between the state attorney and the defendant.

In the Anglo-Saxon legal jurisdictions negotiating about the legal qualification of the act committed is quite common[9]. However, the situation in Central European Region is different, i.e. if the equal position of both parties is to be kept it is not admissible for the same acts to be assessed in different ways merely for the purpose of making the criminal proceedings run faster. In other words under the Central European continental criminal law system it is not possible for the state attorney or the court to derive knowingly a wrong legal assessment of the act committed on the basis of the facts of the case[10]. In this respect the Czech legal regulation must be interpreted this way that negotiation about legal qualification of act prosecuted is ruled off[11].

As it has been noticed, the solution of the criminal case through the agreement upon the guilt and punishment is not limited only to categories of less serious crimes, unlike diversions in criminal proceedings. However, Criminal Procedural Code determines some limitation for the use of this measure (§ 175a clause 8 of Criminal Procedural Code). First of all, the agreement upon the guilt and punishment cannot be negotiated when some extremely serious criminal offence is being prosecuted. (i.e. offences, where the Criminal Code sets the penalty with an upper limit of imprisonment of ten years and more – see § 14 clause 3 of Criminal Code). This limitation is interesting, because the legislation admits in this way that at least with the most serious crimes the agreement upon the guilt and punishment cannot be used as a substitute for the results of evidence presented and obtained during the trial, which means that with this category of offences the principles of criminal proceedings headed by the principle of material truth must be followed unexceptionally.

The agreement upon the guilt and punishment cannot be used also if the accused is prosecuted as a fugitive and in criminal proceedings against juveni-

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[9] Compare e.g. **J. Štěpán**, *Některé rysy trestního řízení ve Spojených státech*, Právo a zákonnost 1991/5, pp. 298–299.

[10] The same in **V. Král**, *Dohoda o vině a trestu v návrhu novelizace trestního řádu*, Právní rozhledy 2008/20, p. II.

[11] For example German legal regulation, namely the provision § 257c clause 2 of the German Criminal Procedure Code, which explicitly rules out the possibility to make an agreement between the two parties in such a way that it would include the statement of guilt (and thus the legal assessment of the act committed).

les (§ 175a clause 8 of Criminal Procedural Code and § 63 of Juvenile Justice Act – Act No. 218/2003 Coll.).

There is also one other aspect of Czech legal regulation of the agreement upon the guilt and punishment, with regards to the process of negotiation itself. The accused must have a defender (advocate) when negotiating the conditions of the agreement upon the guilt and punishment, because Criminal Procedural Code [§ 36 clause 1 letter d)] put this situation among the reasons of compulsory defense.

Thus the Czech legislator took a careful approach towards the rights of the accused in the proceedings dealing with the agreement upon the guilt and punishment trying to secure an equal position of both the defense and the state attorney when negotiating the conditions in the agreement upon the guilt and punishment. By the way this is the reason why, under the Czech criminal procedure code, the compulsory defense is connected merely with the process of negotiating the conditions of the agreement upon the guilt and punishment itself. After the agreement has been made the accused does not have to be represented by the defender, not even at the stage when the court is in the process of decision-making about the approval of the agreement. It is just during the process of making the agreement with the state attorney when the accused significantly weakens his procedural position by his confession to the act prosecuted. Professional legal assistance provided by the counsel for defense also helps to prevent the state attorney from using undue duress upon the accused[12]. Last but not least it is important to point out that the state attorney (sometimes also called the person representing the prosecution) is a professional whose knowledge and experience can play a bigger role in the process of negotiating about the guilt and punishment of the accused as compared to the trial where this drawback on the part of the accused can be balanced to at least a certain extent by the impartial judge who is fully in charge of this stage of criminal proceedings.

[12] **M. Hrušáková**, **P. Jiříček**, *Dohoda o vině a trestu z pohledu obhajoby*, [In:] **F. Ščerba** a kol, *Dohoda o vině a trestu a další prostředky racionalizace trestní justice*, Leges, Prague 2012, p. 35.

2. Approval of the agreement upon the guilt and punishment by court

If the state attorney and the accused person (and his defender) successfully makes the agreement upon the guilt and punishment, the state attorney submits proposal of such agreement to the court (§ 175b clause 1 of the Criminal Procedural Code). Court's role in the process of judging such a proposal is very important, because rightly the court carries the final responsibility for the result of the criminal proceedings as in the question of guilt, as in the question of punishment.

If the court approves the proposal of the agreement upon the guilt and punishment, such decision has a form of condemnatory sentence with all its effects (§ 314r clause 4 of the Criminal Procedural Code). However, the important difference in comparison with the standard sentence regards the fact that it is impossible to appeal against this decision, with the exception of the reason of discrepancy between the court's decision and content of the negotiated agreement (§ 245 clause 1 of the Criminal Procedural Code).

At this point, it is important to focus attention primarily to some of the circumstances, which the Criminal Procedural Code determines as reasons for refusing (disapproval) of the proposal of agreement upon the guilt and punishment (§ 314r clause 2).

The first of them regards the situation, when the agreement is based on incorrect findings of the facts. It may be considered as the next manifestation of the principal of material truth and the court's responsibility for obtaining adequate proof of all the relevant facts. It is necessary to emphasize that the court should refuse the proposal of agreement upon the guilt and punishment not only if this agreement does not correspond to the found fact, but also in the situation, when the facts were not sufficiently established, so the findings of fact are necessary to complete in some essential aspects.

Such an interpretation regards primarily to the potential danger (mentioned above), that the state attorney may be sometimes willing to deal with the agreement upon the guilt and punishment in spite of the lack of evidence, in order to quickly and easily solve the case. The court's interpretation on the quality of evidence represents a final prevention of this fault.

The next reason for the refusal of the agreement upon the guilt and punishment is based on the inadequacy of the proposed punishment or protective measure. Considering of adequacy of negotiated sanction may represent one

of the greatest problems, because of collision between principle of adequacy of punishment and the purpose and essence of the agreement upon the guilt and punishment.

The criteria which must be followed by the court when setting the terms of punishment (the gravity of the act committed, the person and circumstances of the perpetrator, the possibilities of the correction of the offender etc., see § 39 and next of Criminal Code) are purely substantive law criteria. The procedural way of settling a case should have no impact on setting the terms of punishment. Logically the same act and the same offender should result in the same punishment, regardless of the procedural method through which the perpetrator was convicted.

But on the other side, the basic principle behind the agreement upon the guilt and punishment from the viewpoint of the accused, i.e. imposing of a less severe sanction as a kind of reward for the confession made, bearing in mind that the accused is primarily motivated to make this agreement by the possibility to bargain a less severe punishment compared to the form of punishment he would probably get if the case was settled through a standard conviction[13].

It should also be noted that speedy criminal proceedings and thus an accelerated sentencing process reached as a result of this special type of settlement of the criminal case boost the efficiency of a punishment and enhances the perception of the legal protection against the crime provided by the state for the public. Thus a more modest sanction which is, however, imposed faster can have a bigger preventive effect both individually and generally compared to a stricter sanction applied after the standard criminal proceedings i.e. a sanction imposed after a longer period of time[14]. The fact that the accused has accepted the punishment (declared by making the agreement upon the guilt and punishment) can also increase the probability of the fulfillment of the re-socialization aim of the punishment. However, it must be said that in a number of cases the defendant will probably want to make the agreement for tactical reasons, or even self-serving reasons, not because of the fact that he has frankly accepted the punishment as a reasonable and fair one[15].

[13] Compare e.g. **K. Šabata, M. Růžička**, *Dohoda o vině a trestu de lege ferenda v České republice a možnosti využití slovenské právní úpravy*, Státní zastupitelství 2009/6, p. 10; **J. Musil**, *Dohody o vině a trestu jako forma...*, p. 9.

[14] Compare **V. Král**, *Dohoda o vině...*, p. II.

[15] Compare e.g. **J. Musil**, *Dohody o vině a trestu jako forma...*, p. 19.

Considering all these arguments it is possible to conclude, that the court within the process of judging a proposal of the agreement upon the guilt and punishment may accept some milder punishment negotiated in this agreement, than in which would have been imposed after standard proceedings. However, the court has to refuse the agreement upon the guilt and punishment, if the sanction involved in this agreement is obviously inadequate to the seriousness of the committed offence and to the other circumstances important in the determination of the sanction.

Conclusion

The Introduction of new instruments for the acceleration of criminal proceedings is usually connected with the great expectation that their use in practice of state attorneys and courts and the consequent reducing of load of criminal justice system. Also the newest measures of this type (the new form of conditional discontinuance of criminal proceedings and the agreement upon the guilt and punishment) were implemented into the Czech criminal procedural law with this belief.

However, there exist some factors, which may limit the number of cases solved through these new measures. Conditional discontinuance of criminal proceedings connected with prohibition to perform an activity represents a measure, which is very suitable for the solution of criminal offences committed in road traffic, where this instrument really may substantially contribute to the acceleration of criminal proceedings. However, this effect may be expected just in connection of these types of cases.

Considering the possibilities of the use of the agreement upon the guilt and punishment, it is necessary to repeat the fact, that this measure represents an important intervention to the conception of Czech criminal procedural law and its basic principles. Thus it is possible to expect some reserve of state attorneys and judges to use this measure. This expectation is strengthened with the fact, that there exists another instrument for the court's decision made without performing a trial – criminal order (see § 314e of Criminal Procedural Code). Criminal order represents a traditional measure within the Czech criminal

law and very popular way of solving of criminal cases[16]. In comparison with the agreement upon the guilt and punishment, another advantage of criminal order (from the point of view of state attorneys and courts) lays in fact, that this decision is not conditioned by the accused's confession. So it is possible to anticipate that state attorneys and courts will rather use this traditional instrument and the agreement upon the guilt and punishment will more likely be used in cases which it is unable to solve through the criminal order (e.g. when prosecuting some more serious offence, or when imprisonment shall be imposed).

It should also be mentioned, that the use of both new measures – conditional discontinuance of criminal proceedings and the agreement upon the guilt and punishment – is dependent on the accused's confession. The number of such cases will always be limited and when the accused person denies his guilt, the acceleration of criminal proceedings must be achieved through other instruments (e.g. through the simplification of proceedings at appellate courts).

Finally it is necessary to emphasize that reducing the load of the criminal justice system and consequent acceleration of criminal proceedings should be rather achieved through reducing the scope of criminal responsibility. Unfortunately, this is just a long-term wish of experts, and the reality is more likely to be to the contrary and the extent of criminal responsibility is getting wider.

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[16] More than half of all cases trying at Czech district courts is decided in the form of criminal order – c closer see Statistické ročenky kriminality (Statistical Yearbook of Criminality), available on: http://cslav.justice.cz/InfoData/statisticke-rocenky.html, and http://portal.justice.cz/Justice2/MS/ms.aspx?j=33&o=23&k=3397&d=47145; at the date 22nd of July, 2013.

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NOWE ŚRODKI ZMIERZAJĄCE DO PRZYSPIESZENIA POSTĘPOWAŃ KARNYCH W PRAWIE KARNYM REPUBLIKI CZESKIEJ

(Streszczenie)

Artykuł zajmuje się ważnym problemem czeskiego sądownictwa w sprawach karnych, polegającym na przewlekłości postępowania. Występowanie tego problemu stało się podstawą działań legislacyjnych zmierzających do wprowadzenia nowych form skróconych procedur. Poprawki do Kodeksu Postępowania Karnego Republiki Czeskiej (Akt Nr 141/1961 Coll.) zostały wprowadzone zarówno z powodu nowych rodzajów postępowań karnych przewidzianych w czeskim prawie karnym (np. warunkowe umorzenie postępowania związane z zakazem działalności), jak też z powodu środka nazwanego porozumieniem co do winy i kary w formie tzw. ugody obrończej (*plea bargaining*).

Artykuł analizuje zalety i wady nowych rozwiązań (np. zgodność z podstawowymi zasadami czeskiego postępowania karnego), jak również problemy z ich regulacjami prawnymi i perspektywami zastosowania w praktyce. Czeskie doświadczenia z nowymi formami skrócenia procedur karnych mogą być użyteczne jako inspiracja oraz porównanie dla specjalistów zagranicznych.

Słowa kluczowe: przyspieszenie procedur karnych, zróżnicowanie procedur karnych, umowa o winie i karze, ugoda obrończa, poprawki do czeskiego KPK, postępowanie karne